

USDA COALITION OF MINORITY EMPLOYEES
"THE COALITION"



**"2006 Report on the State of Civil Rights at the U.S. Department of Agriculture"
Update**

Yet another year has come and gone and the USDA Office of Civil Rights (OCR) is no better off today than it was in 1994. The USDA Coalition of Minority Employees (The Coalition) was officially recognized in 1994 and began its mission to eradicate discrimination USDA wide and improve the Department's longstanding dysfunctional civil rights administrative practices and processes. Many would agree that it is worse now than it was during the Ronald Reagan Administration, when the OCR Program Division was completely shut down, employee cases processed at a snails pace and staff routinely decided which cases to accept or reject. This was kept hidden from the Congress and the American people.

OCR has become increasingly emboldened and is managed by officials who appear unconcerned about the callous and brutal treatment suffered by USDA employees, customers, minority, disadvantaged and women farmers. The Black farmers of this Nation continue to be the recipients of the worst treatment. The present chaos in the OCR is an utter disgrace. Make no mistake...these conditions have existed for decades right under the watchful eyes of President after President, Congress after Congress (both Democrat and Republican), Secretary of Agriculture after Secretary of Agriculture and Civil Rights Director after Civil Rights Director. Unfortunately, little has changed for those who continue to seek justice.

The Coalition has once again compiled its year end report, "2006 State of Civil Rights at the U.S. Department of Agriculture." This years report **continues** to expose the abhorrent conditions in the USDA OCR and illustrate how callousness and indifference were generated through mismanagement and a culture of abusive. Although USDA's Civil Rights leaders (political and career) are aware of the illegal behaviors and deceptive practices of the OCR, their strategy is to do little or nothing and allow the abusers to go unpunished. Leaders who fail to correct these conditions contribute to perpetuating these behaviors and give the abusers (and onlookers) the impression that these actions are condoned by USDA. Some of the abusers receive promotions and awards for their performance. What a sorry state of affairs! We must continue to tell the truth and correct this deplorable situation. USDA can no longer be afflicted by the "Three Monkey Syndrome" hear no evil, see no evil and speak no evil. As a government agency USDA is subject to oversight and scrutiny ...it is time for this Administration to remove its blinders and tackle the issues.

USDA Written Policy States:

"The United States Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (such as Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD)." This appears on USDA printed publications and is the Law; therefore, it must be carried out fully through the utilization of USDA-wide efforts and resources. For many the above is only window dressing and few are held accountable for the monitoring, implementation and non-compliance.

The 92 recommendations contained in the USDA Civil Rights Report Action Team Report addressed racism and other forms of discrimination with vigor. One year later in March 1998, The Civil Rights Implementation Team Report (CRIT), was published...an implementation plan that was beyond politics. Both Reports disappeared from the USDA website under the leadership of Vernon Parker (former Assistant Secretary for Civil Rights). The Civil Rights principles and policies implemented by Dan Glickman (former Secretary of Agriculture) applied to each and every USDA employee. Secretary Glickman stated that, "All USDA employees are to be treated fairly and equitably, with dignity and respect." That ideal has become part of history...no longer practiced under the present Administration. We contend that the civil rights administration and process have worsened under the Bush Administration. Those with the power to implement positive change have failed miserably. They continue to ignore the "root causes" (identified as well as the solutions) of these longstanding systemic problems. That is why many continue to this day to refer to USDA as "**The Last Plantation.**"

Civil Rights leadership has failed to keep its promise to improve the situation in the OCR and eliminate discrimination, harassment, intimidation, hostile work environment, sexism, sexual abuse and the myriad of abuses that continue to permeate and infect the Department. Higher authorities must step in to assist USDA...whose efforts amount to nothing more than putting a "band-aid on a cancer."

Employee Complaints:

At the end of Fiscal Year 2006, the USDA OCR had over 1350 active complaints and perhaps more. Over 500 of those active complaints were pending the issuance of a Final Agency Decision (FAD) and another 400 plus cases were pending an administrative hearing at the Equal Employment Opportunity Commission (EEOC). EEOC will eventually issue a suggested decision to USDA on those cases. The remaining active cases were at the initial stages of the EEO process, pending acceptance, dismissal or an investigation that would result in a Report of Investigation (ROI). The ROI serves as the official record indicating whether or not there has been a finding of discrimination.

The 500 formal complaints filed against USDA in Fiscal Year 2006 do not include complaints settled during the informal stages. The number of formal complaints filed (500) has remained fairly constant over

the decades, indicating that Alternate Dispute Resolution (ADR) and Early Intervention Programs have had little to no impact in reducing the number of cases settled. Unfortunately, approximately fifteen (15) of the complaints were filed by OCR employees, against the OCR managers responsible for processing USDA employee complaints. At the end of Fiscal Year 2006, there were still 30 unresolved internal employee complaints languishing in the OCR, some from as far back as 1999. The OCR is less efficient than individual USDA agencies at resolving complaints ...a sorry state of affairs! The OCR managed to close over 500 of its 1400 formal complaints. About 160 of these cases were settled by the complainant and the responding sub-agency. Fewer than 50 were closed by a decision issued by EEOC for FADs against USDA. Fifteen Fiscal Year 2006 FADs reported findings of discrimination. This is alarming, since in Fiscal Year 2003, only 5 findings concerned discrimination. Who has been held accountable for this increase? Those having oversight should be very distressed by the dramatic increase in the number of cases where discrimination was found and even more shocked by the dollars spent on approximately 160 EEO complaints settled via "no-fault" agreements.

Dollars Wasted by the OCR in Fiscal Year 2006:

- \$3.5 Million in compensatory damages was paid to complainants to resolve their cases.
- Over \$140 Thousand was paid to settle complaints against OCR at a cost of more than \$2 million.
- \$1 Million was spent to pay attorneys representing complainants where discrimination was found.
- \$1 Million was spent to investigate complaints to produce impartial ROIs.

The OCR is riddled with serious management flaws, including a culture that lacks **Accountability**. They fail to comply with the regulatory requirement of 180 days to produce an ROI, taking around 250 days to issue the Report. Question: Who has been held accountable for the consistent number of EEO complaints filed year after year and the increased findings of discrimination?

Class Action Lawsuits:

Donnelly Class – A Culture of Abuse

The Forest Service (FS), Region 5, California, has been under scrutiny by the Coalition since 1996. We have seen the Donnelly class action lawsuit certified, settled, implemented, breached, extended and terminated in January 2006. Under the Donnelly Consent Decree the FS was required to offer mediation to complainants during the informal process to provide them with an opportunity to resolve their issues through utilizing Alternative Dispute Resolution (ADR). Regrettably, ADR has all but been eliminated in

Region 5. Managers have refused to participate in requested mediations and those identified as discriminating officials are permitted to deny requests for resolution.

The African American Class Action:

The National African American Class Action (Spencer vs. the United States Department of Agriculture - case # 99-0659/EEOC-OFO Docket #01A60669) was not certified by the United States Equal Employment Opportunity Commission (EEOC). Consequently the class was dismissed by the EEOC Administrative Judge on July 19, 2005. This non-certification is presently being appealed through EEOC's Office of Federal Operations. The basis of the appeal is whether the EEOC Administrative Judge correctly determined that the request for certification was denied on the grounds of the lack of commonality. The African American complaints have been held in abeyance since 1999, requiring complainants to continuously contact the USDA OCR to ascertain the status of their cases. The requests regarding complaint status directed to former Assistant Secretary for Civil Rights Vernon Parker went unanswered. During the summer of 2006, many African Americans complainants in Spencer began directing the Abeyance Disparate Class Action questions to the new Assistant Secretary for Civil Rights, Margo McKay.

Finally three questions remain prominent in the minds of individuals at the forefront of the African American Class action efforts. How many other class actions were held in abeyance prior to class certification by the EEOC?; Why were the African Americans employees "singled out for different or disparate treatment" prior to certification? and Has justice been denied in the processing of these African Americans complaints held in abeyance?

Hispanic Class Action - Results of Settlement Hearing, January 19, 2007:

On February 10, 2006, the Forest Service (FS) appeared before a U.S. District Judge in Oakland, California, on a plaintiff's motion for contempt and enforcement of the Hispanic Settlement Agreement. The scheduled expiration date for the Agreement was February 14, 2006. The Plaintiffs requested an extension for two or more years. The judge extended the Agreement for only one year, since the FS failed to discharge all of its obligations under the Agreement.

African American Female Class – Natural Resource and Conservation Service-no status.

1890 African American Class – Animal and Plant Health Inspection Service -no status.

Native American Class, Keepseagle, Program complaint- no status.

Waste of Taxpayer Dollars by the OCR Employment Division in Fiscal Year 2006

There was a waste of money in the OCR Employment Division in Fiscal Year 2006. The OCR has been using American tax dollars to insulate themselves from criticism and hide the truth, and to purchase loyalties at the expense of the taxpayer.

Employment Division Budget Fiscal Year 2006 (estimate)

Employment began fiscal year 2006 with 473 cases and ended with 325 cases.

Employment, Compliance and Technical Assistance ... \$1.5 Million

Employment Intake, Investigation and Adjudications.....\$4.8 Million

Program Complaint Division Budget (estimate) Fiscal Year 2006

Program Compliance.....\$722 Thousand

Program Intake, Investigation and Adjudication.....\$4.5 Million

Tracking Applications and Analysis.....\$980 Thousand

Policy, Analysis, Research and Evaluation.....\$5.4 Million

Outreach.....\$1.4 Million

Conflict Prevention Resolution.....\$744 Thousand

**The above figures include salaries for 181 staff years.*

Total Estimated Cost for Fiscal Year 2006.....\$20,109 Million

Minus positive results, how long will this Administration permit this waste to continue?

Program Complaints:

The abysmal situation existing in OCR's Program Complaint Processing Division has existed for years...a direct result of USDA's refusal to adhere to federal laws and USDA policies. During the Reagan Administration the Program Complaint Processing Division was complete dysfunctional. Cases were stored in grocery carts, on the floor, on top of filing cabinets, all justified by USDA officials, and others who were never held Accountable.

Since the year 2000 the processing of farmer complaints has deteriorated even further. Women, minority and disadvantaged farmers, especially, Black farmers continue being subjected to the greatest abuse because of the failed racist process. Weak law enforcement and the lack of desire by those with the power to bring about positive change continue to exacerbate the problems. When will USDA, the court system or the Congress finally institute changes that are more than cosmetic and hold those charged with implementation Accountable? The Pigford Class Action Lawsuit resulted in the largest civil rights settlement in American history. Yet there are still those in USDA that remain in a state of denial and are convinced that no wrong was done.

For years, the Program Complaint Division has been an albatross around the neck of USDA. Over the past three years, the Office responsible for processing Title VI complaints has been intentionally and consistently dismantled (staff reduced from approximately 60 employees to less than 20 employees.) This downsizing had made the Office even more dysfunctional and has further reduced customer service. Limiting resources is one method those in power utilize to justify refusals to settle complaints in advance of litigation. Limited staff has not only prolonged processing time, but has generated extra abuses against employees working to resolve farmer complaints. Program Division managers, in an effort to prevent OCR employees from filing cases against them, subjected their employees to harassment, intimidation, reprisal and hostile work environments. The former Assistant Secretary for Civil Rights not only failed to exercise his full authority to help OCR employees resolve their complaints, he also refused time and again to meet with Black farmer attorneys attempting to settle Black farmer complaints.

The Coalition finds it imperative to bring to light the biggest failure in the Program area in recent years. OCR Management reorganized the OCR under the guise of "realignment." Under this "realignment" a lapse of judgment occurred in an effort to *handle* a personnel problem. The Program Adjudication Division was merged with the Employment Adjudication Division. The new division is called the Complaints Adjudication Division, (CAD). The merger between the adjudication of employment and programs has not resulted in fairness to the program farmers, agencies or other stakeholders. In essence, this has been a bad marriage with only one of the parties to the marriage being fulfilled under the terms of the "contract agreement."

Under CAD the adjudicators in the division have only been assigned, and are therefore only processing employment complaints of discrimination. Very, very few program complaints of discrimination have been processed under the current Chief of CAD. The program work sits in the file room on the 4th floor as dust collectors.

More program complaints were processed under the previous Chief of CAD who had a background in the program area. This realignment has resulted in another unnecessary cruelty for the farmers to bear. Especially, in light of the fact that these farmers have been so greatly harmed in recent years and who are currently very patiently awaiting decisions on their complaints.

It is also important to note that when the new Chief of CAD began his tenure in October 2005, there was no backlog in the Program Adjudication area. There were some (probably less than 50) program complaints awaiting adjudication, but the number was manageable. At the beginning of fiscal year 2006, the USDA OCR reported that the inventory of program complaints awaiting adjudication totaled 923! OCR employees worked tirelessly under the Statute of Limitations Project to process all program Final Agency Decisions and stem the backlog. Unfortunately and predictably OCR management has now created yet another backlog that is growing every day, without consequence!

One hundred and eighty nine complaints were pending in the Intake (now PCD) process; 260 pending in Investigations, (now PCD) and 475 pending adjudication (149 of those pending adjudication were appeals from the Food and Nutrition Service). **At the end of fiscal year 2006, Intake had a balance of 237 program complaints, forty-eight more than when it started.** At the end of Fiscal Year 2006 the intake division had a balance of 237...48 more than it started with and an ending balance of 189 (less Food and Nutrition Service cases). The Investigation Division began the year with a balance of 219 cases.

Failure of USDA Civil Rights:

USDA has failed to deliver the improvements that were to accrue from the creation the new Office of Assistant Secretary for Civil Rights. Oversight of the USDA-wide civil rights process is non-existent. Oversight Committees have not vehemently demanded that USDA carry out a civil rights program that treats all employees and all customers with dignity and respect. The once vigilant House Agriculture Committees with many dedicated advocates of the past, now has an absence to knowledge and historical perspective of USDA's decades of discrimination and abuses, especially, Black farmers have been put in harms way.

Vernon Parker was confirmed April 1, 2003. Soon after he assumed his duties more than 2000 complainants (listed as inquiries) were filed. The Office was inundated and forced to hire inexperienced temporary staff to enter these complaints into the antiquated system, send out 15-day letters and assist wherever they were needed. Cases entered into the antiquated system (not configured to recognize incorrect spellings, duplication, etc.) were completely mishandled and some were never entered and went addressed. Other cases were haphazardly closed for failure to respond and considered Final Agency Decisions (FADs). There were rumors that the temporary employees hid complaints in desk drawers, shredded others and threw many in the trash. Some of the same activities exist to this day! The Office was a complete fiasco. There was speculation regarding case tampering, reversing decisions to favor agencies and payouts awarded to those willing to keep their mouths shut.

Mr. Parker pledged to "to work to root out discriminatory practices as weeds in the garden of democracy." That never happened. Some farmers and community based organizations were given special treatment. One

class action lawsuit was settled at the expense of many innocent employees. Many vocal community-based organizations around the country (farmer advocates) have all but disappeared or have been silenced. Many members have died while awaiting justice. Also silenced are the internal USDA employee organizations that fought so hard for justice in the late 1990's. Reprisals and threats of intimidation have successfully controlled the outspoken voices for justice. The Coalition remains a target to be demonized because it has continued its mission. Make no mistake, this culture continues to pervade the environment at USDA and continues destroying the lives of employees and customers.

The USDA Office of the Assistant Secretary for Civil Rights and the Office of Outreach, are responsible for the failure of the Memorandum of Understanding (MOU) between Marriott International (signed on March 31, 2004) and the US Department of Agriculture, which ended on February 24, 2007. **USDA did not furnish a single Black farmer the needed requirements to sell directly to Marriott International during the life of the MOU.** This relationship ended after much waste of tax dollars and government resources. The USDA Center for Minority Farmers was never fully functional and seldom visited by Black farmers. This partnership model is a total failure due to USDA's poor administration & mismanagement. This is certainly a huge disappointment to Marriott and the many Black farm producers who had such high expectations of the program's success.

The Coalition is optimistic that the new Assistant Secretary for Civil Rights and the General Accountability Office (GAO) investigation presently being conducted on the OCR will uncover the profound problems existing in the Office's administrative civil rights practices and processes. We are confident that the GAO will discover that millions of American tax dollars that have been squandered since the establishment of the new position of Assistant Secretary for Civil Rights. (A few examples of waste include: funding for the complaint tracking system; cost-overruns; money earmarked for staffing used for other purposes; questionable funding of a public relations campaign that partially misinformed the public; USDA customers and the Congress; and, poor management of the thousands of dollars spent on listening sessions that could have been directed to improving civil rights administration and processing.) The Coalition and its representatives nationwide will continue to work in cooperation and partnership with USDA officials to improve civil rights and workforce diversity nationwide.

The boldness and failure under Vernon Parker and his leadership team runs deep to the core of our justice system and goes far beyond dollars. Their behaviors speak for themselves:

- Ignoring the widespread abuses in the FS, region 5, California - egregious acts against women including rape and the abuses at the APHIS laboratory in Ames, Iowa;
- Participating in widespread discrimination, retaliation, reprisal and intimidation within the OCR itself;
- Failing to process the backlog of cases of employees and farmers; (said to be in the thousands).
- **Permitting since 2003**, the orchestrated and systematic dismantling of the USDA OCR Program and Employment Divisions to reduce effectiveness/productivity;

- Conducting a media/public relations campaign intentionally designed to mislead and misinform (pretend they were following the laws and USDA policy); and
- Abusing power, by controlling those who dared to speak out against their behaviors. **The abusers frequently receive awards and promotions to retain the status quo.**

USDA Civil Rights has spun out of control due to a serious lack of "Accountability" and proper oversight. There have been many reports, investigations, court actions (farmers and employees), media coverage and public exposure of their widespread abuses. However, all of this has failed to stem the tide of USDA's discrimination and abuse. Little that USDA does is designed to address the "Root Causes" of the problems. They always come-up with a plan(s) or activities that produce limited results.

USDA was supposed to address the lack of workforce diversity within the department; however like everything at USDA, there has been more lip service than action. Two very successful recruitment programs have taken place at California Polytechnic University, Pomona, California, and Iowa State University, Ames, Iowa. *These programs have not received adequate support from the USDA. Workforce Diversity can be enhanced through these very successful recruiting programs.*

If the Office of Civil Rights can't clean up its own house, how can it clean USDA CR nationwide? The USDA Office of Civil Rights is still controlled by the USDA Office of General Counsel (OGC). The "firewall" between the OCR and the OGC is non-existent. The new Assistant Secretary for Civil Rights inherited these problems and must exercise the Office's full authority to process and resolve individual and class complaints for USDA employees and farmers. The Coalition will continue to work with the Office of the Secretary, the new Assistant Secretary for Civil Rights and other USDA officials to bring an end to the widespread abuses in USDA nationwide. This will assist USDA in meeting the expectations of the Congress and improving the lives of those who are still suffering.

References:

December 20, 2006: Joint American Federation of Government Employees (AFGE) Union and The Coalition Letter to Honorable Margo McKay, regarding abuses occurring in OCR.

November 15, 2006: Memorandum/Report on the Abuses within USDA OCR: Issues for The Coalition to address with Margo McKay, Assistant Secretary for Civil Rights

November 15, 2006: Coalition: Meeting with Margo McKay, Assistant Secretary for Civil Rights.

November 13, 2006: Report by Lesa Donnelly, Vice President, The Coalition, "2006 State of Civil Rights in the Pacific Southwest Region-Civil Rights Abuses.

August 2006: OCR Abuse Report: Civil Rights Perception, Micro-Management Team, resulting from Program Complaints Division (PCD/Complaints Adjudication Division (CAD) Retreat.

September 13, 2006: Testimony, Lesa Donnelly, Vice President, The Coalition, USDA Listening Session on Cooperative Conservation, Redding, California.

March 31, 2004: Memorandum of Understanding between Marriott International, Inc. and the U.S. Department of Agriculture.

March 1998: USDA Civil Rights Implementation Team Report.

February 28, 1997: USDA Civil Rights Action Team Report.